

There are a number of regulatory matters related to the RM 10.9 Removal Action where the NJDEP has stated that it has responsibility and authority. In some instances it is clear that NJDEP has responsibility and these include:

- Flood Hazard Assessment
- Water Front Development
- Evaluation of Operations and Disposal Facilities
 - Acceptable Use Determination
 - Air Permitting
- State Historic Preservation Organization

However, there appears in some instances that the Department has introduced requirements that are neither required nor relevant for the Department to process applications and approve activities related to the above-listed matters. Further, there are some instances where NJDEP has determined that it has authority that is not clearly supported by State or Federal statutes and regulations. This includes NJDEP's contention that it must approve the landfill where the RM 10.9 sediments will be disposed, which is clearly a decision made by USEPA. Responding to and resolving these additional requirements by CPG are putting the Removal Action schedule at risk.

The following is a summary of the CPG's concerns and request for assistance regarding how NJDEP is approaching Permit Equivalencies.

Responsiveness: The CPG has provided the Department with the data and analyses (e.g., potential to emit (PTE) calculations for the Removal Area, but the Department does not provide timely or analytical feedback that would allow the CPG to help them come to a quick and appropriate resolution on these issues.

- Air Permitting – CPG provided PTE analyses for the dredging operation in December and provided in early January additional detail that NJDEP requested. The CPG's analysis clearly indicated that the dredging operation will not trigger any air emission regulations. NJDEP indicated verbally to the CPG that they may still try to impose air emission and/or monitoring controls over the dredging operation. It is unclear where the regulatory authority to do this (assuming the Department proceeds down this path) would actually come from.
- State Historic Preservation Organization - The Department accepted the responsibility to inform the State Historic Preservation Organization (SHPO) of the project during the November 29, 2012 DEP-CPG Meeting. In a teleconference on February 6, 2013 NJDEP stated that there were no SHPO issues, but CPG still has not received SHPO confirmation documenting this finding.
- Flood Hazard Assessment (FHA) – The Department requested the CPG to conduct a flooding assessment/modeling as additional documentation to support that flood hazard is not applicable. The CPG provided data to support its contention that detailed flood hazard modeling is not warranted. If a Flood Hazard application-equivalent is required by the Department, then the project schedule will be seriously impacted. It will take several months and significant investment to develop a detailed model with more

refinement and coverage than the HEC-RAS model reportedly being developed by FEMA. The Department's own Bureau of Dam Safety and Flood Control has indicated in conversations with CPG representatives that a "no net fill" project covering ~5.5 acres of a mudflat will impose no new, flood-creating obstructions in the river.

- NJDEP has yet to provide a response to the CPG's position or analysis of the CPG's data and the Department's own expert's opinion that the Removal Action project will not change flooding potential and does not need a Flood Hazard assessment. The Bureau of Case Management and the Land Use Regulatory Program office instead asked the CPG as recently as last week when the results of more detailed modeling would be available for them to review.
- Water Front Development (WFD) – NJDEP has indicated that they cannot review the WFD application in less than 30 days although they have already reviewed the draft project design documents and have been shown how the Removal Action design was modified to prevent any impact on upland property owners in the vicinity of the RM 10.9 Removal Area.
 - NJDEP has indicated the WFD would not be approved unless they also have the AUD application which is provided by the selected commercial stabilization facilities; the AUD is originated and submitted by the stabilization facilities and not from the CPG; tying the WFD process for dredging which impacts the RM 10.9 area to the AUD process which covers facilities in Newark Bay and the Kill van Kull, appears inconsistent and will delay the overall project.
 - To keep the schedule moving forward, the CPG suggested NJDEP consider issuing a "conditional approval." This will allow the CPG to appear before the Tidelands Commission at the May 1 meeting. The CPG will need to receive the conditional approval in writing and inform the Commission by April 15 in order to be included on the agenda. CPG has not received a response as to whether the proposal for a conditional approval is acceptable.

Applicability of Regulations: NJDEP is attempting to use NPDES-style approaches to mandate data collection around several aspects of the RM 10.9 Removal Action, but the regulatory basis for doing that is unclear, the schedule impacts could be significant, and the usability of the recommended data collection scheme is questionable.

- Water Front Development (WFD): The water quality monitoring program that the Department is requesting during the dredging operation, in which NJ surface water quality standards would need to be met outside of a calculated mixing zone is not possible since the Passaic River does not currently meet surface water quality standards. Furthermore, NJDEP now states that the WFD will not be approved if there are any future submittals such as RM 10.9 Removal Action Design Construction Water Quality Monitoring Plan. But the CPG will not receive final approval for its Water Quality Monitoring Plan until a new draft proposal is submitted (planned within the next 2 weeks) and the Final Design Report is approved (anticipated in late March), thus delaying the WFD process.
- Evaluation of Operations and Disposal Facilities – NJDEP has requested elutriate testing/characterization of dredge sediment that is normally required for direct discharge

of excess barge water to surface water during maintenance dredging operations. The CPG has indicated that excess barge water will be collected, containerized, tested and then disposed of at an off-site facility that has permits to treat such water; therefore, this requirement is neither applicable nor required.

Regulatory Authority: The Department appears to be exceeding its regulatory authority as it relates to Acceptable Use Determinations (AUDs) for the management of dredge sediment.

Evaluation of Disposal Facilities – Previously, the Department has used the AUD process to assess dredge sediment quality so that they can determine if the end-product of a treatment process would be environmentally safe for use within the State for purposes such as fill or landscaping material. The CPG has determined from the outset of the Removal Action that the treated RM 10.9 sediment would be disposed of at an out-state Subtitle C Landfill and not reused for any purpose. A significant amount of data characterizing RM 10.9 sediment has been collected and provided to the Department and USEPA. The Department is questioning the disposal facilities ability to accept such characterization data as being adequate for making decisions as to the materials acceptability for treatment. The Department has indicated it will not grant an AUD to the commercial stabilization facilities for treating the RM 10.9 sediment unless the Department also approves (1) the out-of-state landfill receiving the sediment for disposal and (2) the commercial wastewater treatment facilities where the excess water will be treated. The approval of the landfill(s) receiving this treated RM 10.9 sediment is clearly an USEPA decision. The Department's AUD guidance does not appear to support the Department's position on this issue.